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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

Debra Morales Ruiz, et al.,

Plaintiff,

vs.

Maricopa County, et al.,

Defendants.

NO. CV-23-02482-PHX-SRB (DMF)

**REPLY IS SUPPORT OF MOTION TO  
DISMISS SECOND AMENDED  
COMPLAINT**

Defendants Maricopa County, Struble, Crutchfield, Dimas, Hawkins, Hertig, Martin, Montano, Moody, Park, Smith, Chester, Rainey, Marsland, Magat, Dailey, Espinoza, Jr., Maricopa County Sheriff Russell Skinner, and former Maricopa County Sheriff Paul Penzone reply in support of their motion to dismiss the Second Amended Complaint (“SAC”). (Doc. 32.) The SAC fixes none of the flaws detailed in the Court’s Order dismissing the First Amended Complaint (“FAC”). (Doc. 30.) The SAC alleges that

1 Alexander Chavez committed suicide in the Maricopa County Jail. The SAC makes the  
2 legal allegation that all MCSO personnel involved with an inmate are “charged” with all  
3 of the information in an inmate’s jail and medical file and thus all Defendants should have  
4 known that Mr. Chavez was an opioid user and suicide risk. There is no support for this  
5 allegation. For this reason, and the other reasons discussed herein, this SAC should be  
6 dismissed.

7 **A. The Count I Section 1983 claims should be dismissed.**

8 **1. Supervisors CHS Director Struble and CHS Medical Director**  
9 **Crutchfield should be dismissed.**

10 The SAC’s claims against CHS Director Struble and CHS Medical Director  
11 Crutchfield are virtually identical to those in the FAC. No additional facts have been  
12 alleged. Similarly, the arguments in Plaintiffs’ response concerning Struble and  
13 Crutchfield are almost word-for-word the arguments the Court rejected in its dismissal  
14 Order. *Compare* doc 12 at 2-4 *with* doc. 44 at 3-5. Plaintiffs still claim that the “CHS  
15 Medical Director” (either Struble or Crutchfield) was directly involved in Alexander’s care  
16 by prescribing, yet failing , to ensure he was given his needed medications.” (Doc. 44 at  
17 4.) Yet, Plaintiffs still “do not allege facts to support that either Defendant Crutchfield or  
18 Defendant Struble was personally responsible for administering [Alexander] Chavez’s  
19 medication or for ensuring that medications were administered.” (Doc. 30 at 13.) And any  
20 such allegation would be legally suspect and factually unsupportable—the CHS Director  
21 and Medical Director do not administer medicine to individual patients, CHS employees  
22 do. That Director Struble and Medical Director Crutchfield are responsible for  
23 implementing and maintaining CHS policies and procedures does not impose liability for  
24 CHS employees’ actions. *See Lemire v. California Dep’t of Corrs. & Rehab.*, 726 F.3d  
25 1062, 1074 (9th Cir. 2013) *overruled on other grounds by Castro v. Cty. of Los Angeles*,  
26 833 F.3d 1060, 1076 (9th Cir. 2016)) (stating that vicarious liability may not be imposed  
27 on a supervisory employee for the acts of their subordinates in an action brought under §  
28

1 1983). The facts alleged, and arguments made, against Director Struble and Medical  
 2 Director Crutchfield are no different than they were in the FAC. They should again be  
 3 dismissed.

4 **2. There are no facts alleged to support a § 1983 against the MCSO**  
 5 **Defendants as a group.**

6 Identical to the FAC, the SAC does not specifically allege that a specific Defendant  
 7 did a specific act that deprived Mr. Chavez of his constitutional rights. Instead the SAC  
 8 alleges that collectively Defendants Smith, Moody, Dimas, Park, Magat, Hawkins,  
 9 Montano, Dailey, Martin, Hertig, and Espinoza could have classified Chavez as "needing  
 10 to be under suicide watch" and could have done "a proper headcount at proper intervals,"  
 11 but did not. (Doc. 32, ¶¶ 125-28.) Plaintiffs also allege that Defendants Park, Magat,  
 12 Hawkins, Espinoza, and Moody "actually conducted patrols and headcounts" on the day  
 13 of Chavez's death. (*Id.* ¶ 132.) Plaintiffs assert that if Defendants Smith, Moody, Dimas,  
 14 Park, Magat, Hawkins, Montano, Dailey, Martin, Hertig, and Espinoza had properly  
 15 performed their duties, Chavez would have been observed at 6:00 p.m. and would have  
 16 been stopped from attempting suicide. (*Id.*, ¶ 138.) These identical claims were made in  
 17 the FAC. (Doc. 30 at 10: 12-22.)  
 18

19 The Court dismissed the § 1983 claims against these Defendants in the FAC  
 20 because courts have consistently concluded that a "complaint that "lumps together . . .  
 21 multiple defendants in one broad allegation fails to satisfy [the] notice requirements of  
 22 Rule 8(a)(2)." *Gen-Probe, Inc. v. Amoco Corp., Inc.*, 926 F. Supp. 948, 961 (S.D. Cal.  
 23 1996) (citing *Gauvin v. Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988)). (Doc. 30  
 24 at 10-11.) The SAC does nothing to remedy this problem—the Defendants remained  
 25 grouped together and their actions undifferentiated. The Count I § 1983 claims should  
 26 therefore be dismissed against these Defendants.

27 The Court also dismissed the FAC's § 1983 claims against these Defendants  
 28 because the "Plaintiffs allege no facts to support that any of these Defendants was aware

1 of and disregarded a substantial risk of serious harm to Chavez by skipping the 6:00 p.m.  
2 security walk” (Doc. 30 at 11: 14-16.) “Chavez was in the general population and  
3 Plaintiffs do not allege any facts to support that [these Defendants] were personally aware  
4 of Chavez’s opiate dependency or prior suicide attempts.” (*Id.* at 16-21.)

5 The SAC still does not allege any facts that these Defendants were personally aware  
6 of Chavez’s opiate dependency or prior suicide attempts. Instead, they allege what is, at  
7 best, an unsupported legal conclusion that “deputies and/or officers are charged with the  
8 knowledge of their inmates’ files and are required to review their inmate’s booking records  
9 and updates of the same.” (Doc. 32, ¶ 112.) They further speculate that “[e]ach of Smith  
10 Moody, Dimas, Park, Magat, Hawkins, Montano, Dailey, Martin, Hertig, and Espinoza  
11 participated in daily briefings before they begin their shifts” and as “part of those briefings,  
12 inmates are discussed as well as any out of the ordinary events—such as Chaves’ overdose  
13 attempt—occurred with any of the inmates prior to their shift.” (*Id.* ¶¶ 110, 111.)

14 Consequently, Plaintiffs claim that *each Defendant* knew, or presumably should  
15 have known, everything about Chavez’s medical condition. (*Id.* at 114-20; doc. 44 at 6-  
16 7.) These claims are nothing more than fiction invented to compensate for the lack of facts  
17 indicating that these non-medically trained detention officers knew *anything* about  
18 Chavez’s medical situation. No statute, regulation, policy, or court ruling provides that  
19 sheriff’s detention officers are somehow “charged with the knowledge of their inmates’  
20 files and are required to review their inmate’s booking records and updates of the same.”  
21 (Doc. 32, ¶ 112.) Unsurprisingly, Plaintiffs’ Response supplies no such authority.

22 Similarly, allegations that Chavez’s overdose attempt was discussed at a daily  
23 meeting is nothing but conjecture and no facts are alleged about which of these Defendants  
24 attended the supposed meeting that may have discussed Chavez or what was discussed.  
25 Again, this is all nothing more than unsupported speculation.  
26

27 There are therefore no *facts* alleged that any of these individual Defendants were  
28 personally aware of Chavez’s opiate dependency or prior suicide attempts. Similarly, there

1 are no factual allegations that these non-medically-trained deputies had the ability to place  
2 an inmate on suicide watch or to treat him for withdrawal symptoms. This is insufficient  
3 to state a valid § 1983 claim and therefore Count I should be dismissed against Moody,  
4 Dimas, Park, Magat, Hawkins, Montano, Dailey, Martin, Hertig, and Espinoza.

5  
6 **3. Defendants Marsland, Rainey and Chester acted properly.**

7 Plaintiffs continue to argue, without any factual basis, that Defendants Marsland,  
8 Rainey and Chester knew that Chavez was suicidal. (Doc. 32, ¶¶ 56-58.) As discussed  
9 earlier, n statute, regulation, policy, or court ruling provides that sheriff's detention  
10 officers are somehow "charged with the knowledge of their inmates' files and are required  
11 to review their inmate's booking records and updates of the same." (Doc. 32, ¶ 112.) Even  
12 if these Defendants knew of Chavez's previous suicide attempt, there are no allegations  
13 that any of the observed anything that would lead them to believe he was again at risk and  
14 no facts are alleged that these non-medically trained deputies had the ability to place an  
15 inmate on suicide watch or reclassify his housing. *See Rizzo v. Goode*, 423 U.S. 362, 373-  
16 75 (1976) (holding that, to state a claim under section 1983, a plaintiff must show a causal  
17 connection or link between the actions of the defendants and the deprivation alleged to  
18 have been suffered by the plaintiff). Plaintiffs seem to illogically argue that Chavez should  
19 have been placed on suicide watch simply because he had previously attempted suicide.  
20 (Doc. 44 at 11: 17-24.) Again, nothing is alleged to indicate Chaves remained a suicide  
21 risk and liability under the Fourteenth Amendment requires a defendant to fail to take  
22 reasonably available measures to abate that risk, even though a reasonable officer in the  
23 circumstances would have appreciated the high degree of risk involved. *Castro*, 833 F.3d  
24 at 1071.

25 Plaintiffs' allegations do not support a conclusion that Defendants Marsland,  
26 Rainey and Chester were aware of and disregarded a substantial risk of serious harm to  
27 Chavez. They should therefore be dismissed from the Count I federal claim.  
28

**4. Maricopa County, Penzone, and Skinner should be dismissed from the Count IV *Monell* claim as a newspaper article published two years after the incident cannot support a *Monell* claim.**

Plaintiffs' *Monell* claim is entirely based on a 2024 Arizona Republic article published two years or so after this incident claiming that the jail's death rate was "astronomical" compared to other more populated jail systems and that suicides accounted for one-quarter of deaths in Maricopa County's jails in 2022. (Doc. 44 at 12.)

This newspaper article is, at best, analogous to a complaint. Allegations, perhaps sensationalized, telling only one side of a story. Importantly, there are no allegations in the SAC and nothing in this article claiming that any of these suicides or overdoses were caused by a constitutional violation. A death in a jail or prison because of a suicide or overdose does not automatically equate to a constitutional violation. To establish *Monell* liability a plaintiff also "must ordinarily point to a pattern of *prior, similar violations of federally protected rights*, of which the relevant policymakers had actual or constructive notice. *Hyun Ju Park v. City & County of Honolulu*, 952 F.3d 1136, 1142 (9th Cir. 2020) (emphasis added). *See also Connick v. Thompson*, 563 U.S. 51, 62 (2011) ("A pattern of *similar constitutional violations* by untrained employees is "ordinarily necessary" to demonstrate deliberate indifference for purposes of failure to train.") (Emphasis added.). Even a lawsuit's settlement cannot constitute notice to support a *Monell* claim." *See Walker v. Arpaio*, 2017 WL 10222126, at \*3–4 (D. Ariz. July 24, 2017) (Since no court made any findings, there cannot be municipal liability because "[n]o reasonable jury could find that [the Sheriff] had been put on notice of a policy that posed a substantial risk to [the inmate's] safety and then failed to act in light of that risk."). Simply alleging that there have been numerous deaths by suicide or drug overdoses in Maricopa County jails do not satisfy *Monell*'s requirement that the County have notice of similar constitutional violations. The Count IV *Monell* claim against the County should be dismissed.

Further, that policies may have been changed after Chavez’s death (doc. 44 at 13) do not show that there were prior constitutional violations. All such changes show is that the jail is working to solve these problems—not that these problems were constitutional violations. *See also* Fed. R. Evid. 407 (subsequent remedial measures not admissible to prove negligence or culpable conduct). And Plaintiffs argument that this article two years after the incident is actually prior notice because it involves deaths that happened before the incident fails for the same reason—there is still no showing of constitutional violations. A number of deaths over the years do not give prior notice of constitutional violations just because of the number of deaths. Finally, alleging that *Monell* liability can be obtained through suing Sheriffs Penzone and Skinner in their official capacities (doc. 44 at 14: 15-25) is redundant. Claims brought in a defendant’s official capacity are equivalent to claims against the entity they are associated with, the County here. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 70 (1989). But the County is already a Defendant, so including Sheriffs Penzone and Skinner in their official capacity is useless and redundant. The Count IV *Monell* claim against the County and Sheriffs Penzone and Skinner should be dismissed.

#### **5. The individual Defendants have qualified immunity from damages.**

Should the Court conclude that the FAC states a claim against these individual Defendants, it should still be dismissed because they have qualified immunity from damages. When evaluating an assertion of qualified immunity, “a court considers whether (1) the state actor's conduct violated a constitutional right and (2) the right was clearly established at the time of the alleged misconduct.” *Gordon v. County of Orange*, 6 F.4th 961, 967-68 (9th Cir. 2021). “There need not be a case directly on point for a right to be clearly established, [but] existing precedent must have placed the statutory or constitutional question beyond debate.” *Simmons v. G. Arnett*, 47 F.4th 927, 934 (9th Cir. 2022) (quotation marks and citation omitted, alteration in original). “The plaintiff bears

1 the burden of proving that the right allegedly violated was clearly established at the time  
2 of the violation.” *Id.* at 934-35.

3 There is no Supreme Court or Ninth Circuit authority clearly establishing that jail  
4 staff can be constitutionally liable for an inmate’s suicide when they had no knowledge  
5 that the inmate was a suicide risk. There are also no factual allegations that these non-  
6 medically-trained deputies should have placed Mr. Chavez on suicide watch when he  
7 demonstrated no behavior to them warranting such an action. There is no Supreme Court  
8 or Ninth Circuit authority clearly establishing that jail staff can be constitutionally liable  
9 for an inmate’s suicide when they are not medically-trained and did not witness any  
10 behavior alerting them of a possible suicide risk. For example in *Regal v. County of Santa*  
11 *Clara*, 2023 WL 7194879, at \*4 (N.D. Cal. Oct. 31, 2023), the court denied an assertion  
12 of qualified immunity ruling that “ prior to 2020 that pretrial detainees have a Fourteenth  
13 Amendment right to be housed with reasonable measures in place to abate *a known risk*  
14 *of suicide.*” *Id.* (emphasis added).

15  
16 Plaintiffs do not dispute that there is no clearly established law finding liability for  
17 a suicide (or overdose) when the decedent demonstrated no behavior indicating a risk.  
18 Instead, Plaintiffs continue to assert, without any authority, that all detention officers are  
19 required to know everything about every inmate, including their HIPAA-protected  
20 medical information.

21 While Plaintiff characterizes Mr. Chavez’s taking of fentanyl as a suicide attempt,  
22 rather than an accidental overdose), there are no plausible factual allegations that any of  
23 these Defendants knew of this incident or witnessed any behavior which would have  
24 alerted Mr. Chavez as a suicide risk. All of the individual Defendants therefore have  
25 qualified immunity from damages.

26 **B. The state-law claims in Counts II and III should be dismissed.**

27 **1. There are no facts alleged to support the Count II state-law**  
28 **negligence and gross negligence claims.**

1 Plaintiffs largely make the same arguments in support of the SAC as they did with  
2 FAC. *Compare* doc 12 at 7-8 with doc. 44 at 9-10. They do try to at least imply that  
3 detention staff knew of and ignored Chavez’s suicidal tendencies the day before he die,  
4 but Plaintiffs instead prove that detention staff properly alerted medical providers of the  
5 issue. Plaintiffs allege that the day before his death, Chavez was found by staff in a fetal  
6 position holding his breath. (Doc. 32, ¶ 76.) When staff “threatened” him with being  
7 placed in a monitored room, he reacted by breathing. (*Id.*, ¶ 77.) They placed him and his  
8 ”mat” back into his jail cell and left him there. (*Id.*, ¶ 78.)

9 The CHS medical records alleged next tell a different story:

10  
11 Patient lying in fetal position on his mat in the day room brought out by  
12 corrections, he is holding his breath when patient was told mental health  
13 would be called and he could be place in a monitored room stopped holding  
breath and began breathing normally, but still not providing arm for vitals.

14 (Doc. 32, ¶ 79; doc. 44 at 7.) The same CHS medical record states that Chavez was  
15 assessed with “ineffective coping” and that the “Plan” was to “report to oncoming shift.  
16 Will reassess for detox. On next rounds for detox.” (Doc. 32, ¶ 80; doc. 44 at 7.)

17 These unnamed, non-medically trained detention officers did precisely what they  
18 should have done—they made medical aware of the problem and medical planned to  
19 report the situation to the next shift and to assess for detoxification. These detention  
20 officers were not negligent or deliberately indifferent.

21 Like the federal claims, Plaintiffs’ state-law claims allege negligence and gross  
22 negligence as a group. (*See* doc. 32, ¶¶ 206-14.) Identical to the § 1983 claim, there are  
23 no facts alleged how *each* Defendant breached a duty of care—was negligent—as to Mr.  
24 Chavez. Like the § 1983 individual claims, the Count II negligence and gross negligence  
25 claims should be dismissed. (*See* Doc. 30 at 14-15.)

26 Plaintiffs also allege that Maricopa County is vicariously liable for the acts of its  
27 employees. (*Id.*, ¶ 210.) Under Arizona law, Maricopa County is not liable for the torts of  
28

employees of the Maricopa County Sheriff's Office. *Sanchez v. Maricopa County*, 541 P.3d 566, 570, ¶ 20 (App. 2023) ("We hold the County is not vicariously liable for the negligent conduct of the Sheriff's employees, including the Deputy Sheriff [.]") And there can be no vicarious liability if the individual Defendants are not negligent or grossly negligent. (Doc. 30 at 15: 5-7.)

**2. The Count III training and supervision claims should be dismissed.**

In Count III, Plaintiffs allege a claim for negligent hiring, training, supervision and retention against Maricopa County, Penzone, Crutchfield, Struble, and Smith. Plaintiffs do not address any of Defendants' arguments concerning these Count III claims in their Response. The Count III training and supervision claims should therefore be dismissed.

**C. Conclusion.**

For the above reasons, and those in their Motion to Dismiss, Defendants Maricopa County, Struble, Crutchfield, Dimas, Hawkins, Hertig, Martin, Montano, Moody, Park, Smith, Chester, Rainey, Marsland, Magat, Dailey, Espinoza, Jr., Maricopa County Sheriff Russell Skinner, and former Maricopa County Sheriff Paul Penzone respectfully request that:

1. The Second Amended Complaint (doc. 32) be dismissed in its entirety;
2. Defendants be awarded their costs and attorneys' fees as allowed by law;
3. The Court award such other and further relief as required by law.

**RESPECTFULLY SUBMITTED** this 20th day of December, 2024.

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 20, 2024, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and served on counsel of record via the Court's CM/ECF system.

/s/ J.C.

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